Supreme Court, U.S.
FILED
FEB 24 1992
OFFICE OF THE CLERK

91-1222

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1991

CALIFORNIA ELECTRIC COMPANY,
A California Corporation,
Petitioner,

VS.

PATRICK BRILEY; MANUEL CADENA; JOHN DION;
LELAND KNISLEY; JOSE MUNOZ; ROBERT PAZ;
RAYMOND TABER; JOHN WHELPLEY
Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ROBERT E. JESINGER
(Counsel of Record)
WYLIE, MCBRIDE, JESINGER, SURE
& PLATTEN
101 Park Center Plaza, Suite 1001
San Jose, California 95113
Telephone: (408) 297-9172
Attorneys for Respondents
Patrick Briley, et al.

February 20, 1992

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

12

QUESTIONS PRESENTED

Respondents disagree with Petitioner's presentation of the questions. The correct statement of the questions presented are the following:

Does federal labor law preempt a state tort action against individual union employees based on a violation of state law which is intertwined with or depends substantially upon consideration of the terms of the collective bargaining agreement under which the employees perform work?

Does federal labor law immunize individual union employees from liability for a breach of the collective bargaining agreement?

TABLE OF CONTENTS

Page

STATUTORY PROVISIONS INVOLVED .....

STATEMENT OF THE CASE .....

FACTS BELOW .....

ARGUMENT .....

I

SUMMARY .....

II

FEDERAL PREEMPTION OF STATE LAW CLAIMS

III

FEDERAL LABOR LAW SHIELDS INDIVIDUAL UNION MEMBERS FROM LIABILITY FOR DAMAGES UNDER SECTION 301 OF THE LMRA .....

CONCLUSION .....

TABLE OF AUTHORITIES

Cases

Page

Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 212 (1985) . .

Complete Auto Transit v. Reis, 451 U.S. 401, 417 (1981) . .

Foley v. Interactive Data Corp., 47 Cal.3d 654, 254 Cal.Rptr. 211, 214, 765 P.2d. 373, 376 (1988) . . . . . .

Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399 (1988) . . . . . .

Statutes

29 U.S.C. § 158(b)(4)(i)(B) and (D); 29 U.S.C. § (b)(4)(ii)(B) and (D); Section 8(b)(4)(i)(B) and (D), 8(b)(4)(ii)(B) and (D) of the Labor-Management Relations Act . . . . . .

29 U.S.C. § 185, Section 301 of the Labor Management Relations Act of 1947 . . . . . .

29 U.S.C. § 187, section 303 of the LMRA . . . . . .

29 U.S.C. § 158, Section 7 of the National Labor Relations Act . . . . . .

California Labor Code section 2922 . . . . . .

California Labor Code sections 2854 . . . . . .

California Labor Code sections 2865 . . . . . .

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1991

CALIFORNIA ELECTRIC COMPANY,
A California Corporation,
Petitioner,

VS.

PATRICK BRILEY; MANUEL CADENA; JOHN DION;
LELAND KNISLEY; JOSE MUNOZ; ROBERT PAZ;
RAYMOND TABER; JOHN WHELPLEY
Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Respondents respectfully request the Court to deny the Petition for Writ of Certiorari to review the opinion and judgment of the United States Court of Appeal for the Ninth Circuit in *California Electric Company, a California Corporation v. Patrick Briley; Manual Cadena; John Dion; Leland Knisley; Jose Munoz; Robert Paz; Raymond Taber; John Whelpley, and Does 1 through 50.*

STATUTORY PROVISIONS INVOLVED

Petitioner has omitted a relevant provision of the California Labor Code. That statute is California Labor Code section 2922, which reads as follows:

> Section 2922.
>
> An employment, having no specified term, may be terminated at the will of either party on notice to the other.

STATEMENT OF THE CASE

The present case presents no important issues for consideration by the Court. This case involves state law tort claims, the evaluation of which is inextricably intertwined with consideration of the terms of a collective bargaining agreement and is therefor preempted by Section 301 of the Labor Management Relations Act of 1947 (hereafter "LMRA"), 29 U.S.C. § 185. Furthermore, federal law shields individual union members from liability for breaches of the collective bargaining agreement. The Ninth Circuit followed well-established precedent of this Court in holding that Section 301 preempts the state law causes of action and in dismissing the action against individual union members.

FACTS BELOW

Petitioner fails to mention the following pertinent facts. For several years, Petitioner had been party to a collective bargaining agreement with the International Brotherhood of Electrical Workers, Local Union No. 234 (hereafter "Local 234"). Respondents were California Electric Company employees working under the terms of that agreement. The collective bargaining agreement contained a no-strike provision (¶ 1.04); a provision for grounds for termination (¶ 2.05); and a provision for quitting employment and notice thereof by the employee to the employer (¶ 3.06(c)). (See Appendix "A").

On October 9, 1986, Respondents walked off the job and quit their employment with California Electric Company. This walk off occurred in the context of a long-standing dispute over job assignments. Petitioner had a time and materials contract to provide electrical construction services to Basic American Foods, Inc. (hereinafter "Basic"). Local 234 members were employed by Petitioner to provide electrical services to Basic. However, Basic also assigned electrical work to its electrician employees represented by the International Brotherhood of Teamsters, as well as employees of other outside contractors. Local 234 members had a long standing dispute over these assignments.

After Respondents walked off their jobs on October 9, 1986, Petitioner filed breach of contract grievances against the Union

and the employees, alleging that the Union and the employees had violated the no-strike clause of the collective bargaining agreement. These grievances are still pending.

Petitioner did not file any unfair labor practice charges with the National Labor Relations Board. Instead, on February 12, 1987, Petitioner filed a lawsuit in federal court against Local 234 and the International union pursuant to Section 303 of the LMRA, 29 U.S.C. § 187. The complaint alleged that Petitioner suffered damages as a result of the walk-off and that Local 234, the International Union and its agents (Respondents and others) violated Section 8(b)(4)(i)(B) and (D), and 8(b)(4)(ii)(B) and (D) of the Labor-Management Relations Act, as amended, 29 U.S.C. § 158(b)(4)(i)(B) and (D); 29 U.S.C. § 158(b)(4)(ii)(B) and (D).

On May 28, 1987, the district court dismissed the complaint without prejudice. Subsequently on July 31, 1987, Petitioner filed this complaint alleging state tort claims against Respondents in state court. Petitioner alleged that Respondents owed Petitioner a duty of ordinary care under California Labor Code sections 2854 and 2865. Petitioner also alleged that Respondents specifically owed Petitioner a duty not to quit without reasonable notice under California Labor Code section 2922. Respondents removed the action to federal district court.

In upholding the district courts' dismissal of the complaint, the Ninth Circuit concluded that Section 301 of the LMRA preempts Petitioner's claims because definition of any of the state statutory duties set forth in California Labor Code Section 2922, as well as Sections 2854 and 2865, depended substantially and inextricably upon consideration of the collective bargaining agreement. The Ninth Circuit also held that Respondents were immune from liability under Section 301 of the LMRA.

ARGUMENT

I

SUMMARY

The Ninth Circuit followed well-established precedent of this Court in holding that Section 301 preempts Petitioner's state law tort claims. The state statutes involved are applicable to cases of at-will employment and are thus superseded by the collective bargaining agreement. Determination of any state statutory duty depends upon consideration of the labor agreement. Furthermore, the Ninth Circuit followed well-established precedent of this Court in holding that federal law shields individual union members from liability for breaches of the collective bargaining agreement, where their actions are unauthorized by the agreement and unprotected by Section 7 of the National Labor Relations Act, 29 U.S.C. § 158.

II

FEDERAL PREEMPTION OF STATE LAW CLAIMS

As the Ninth Circuit held, Section 301 of the LMRA preempts any state law cause of action where the "evaluation of the tort claim is inextricably intertwined with consideration of the terms of the labor contract." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 212 (1985); *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399 (1988). In this case, the state tort claims were dependent on an analysis of the collective bargaining agreement. In scrutinizing the state statutes asserted by Petitioner, the Ninth Circuit reasoned that California Labor Code section 2922 creates a presumption of at-will employment; however that presumption may be superseded by contract. *Foley v.Interactive Data Corp.*, 47 Cal.3d 654, 254 Cal.Rptr. 211, 214, 765 P.2d. 373, 376 (1988). Thus, the collective bargaining agreement displaced the statutory presumption of at-will employment; any requirement of Labor Code Section 2922 for notice of termination is therefore inapplicable. Analysis of the employee's duties upon termination under state statutes, including the duty of care under the Labor Code sections 2854 and 2865, must depend upon interpretation of the

labor contract, which in fact includes termination provisions in ¶ 3.06(c).

As the Ninth Circuit made clear, the Labor Code sections cited by Petitioner do *not* impose "minimal standards" to be "applied to unionized and non-unionized employees alike," as Petitioner asserts. Petitioner's basic argument is that § 301 should not have preemptive force because Petitioner's complaint alleged state law claims, rather than breach of labor contract claims. Under Petitioner's argument, tailoring a complaint to omit any reference to a collective bargaining agreement would preclude preemption under § 301. That is not the intent of the preemption principle. The court must look beyond artful framing of the complaint to determine whether evaluation of the state claims is inextricably intertwined with consideration of the labor contract. *Allis-Chalmers Corp. v. Lueck, supra*, 471 U.S. at 212. The labor contract in this case included a no-strike provision, a termination provision, and a provision for quitting employment and for notice to the employer. Thus, these claims were intertwined with the contract and were therefore preempted under Section 301 of the LMRA.

III

FEDERAL LABOR LAW SHIELDS INDIVIDUAL UNION MEMBERS FROM LIABILITY FOR DAMAGES UNDER SECTION 301 OF THE LMRA

The Supreme Court has held that individual union members "acting not in behalf of the union but in their *personal and nonunion capacity*" are immune from suits for damages under § 301 even if their conduct was unauthorized by the union and in violation of a collective bargaining agreement. *Complete Auto Transit v. Reis*, 451 U.S. 401, 417 (1981). Petitioner attempts to distinguish *Complete Auto Transit* from the case at hand by asserting that § 301 and § 303 requires "concerted activity" in order to invoke immunity for individuals from damage actions. There is no such requirement under federal labor law, and no logic to Petitioner's argument. Clearly, if only *one* employee took an unauthorized action against the employer and walked off the job, that action would not constitute "concerted activity," but

would still be immune from liability under *Complete Auto Transit*.

Petitioner's argument regarding immunity is simply another attempt to argue that its state law claims should not be *pre-empted*. Petitioner does not argue that Respondents should be liable for violations *of the collective bargaining agreement*, but rather insists that they "should not be immunized for their *commission of state torts*." Petitioner's Brief, p.18 (emphasis added). This argument has already been addressed and disposed of in the argument on preemption.

CONCLUSION

For all the foregoing reasons, Respondents respectfully request the Court to deny the Petition for Writ of Certiorari.

Dated: February 20, 1992

Respectfully submitted,

WYLIE, MCBRIDE, JESINGER SURE & PLATTEN

Robert E. Jesinger, Counsel of Record

Attorneys for Respondents Patrick Briley, et al.

APPENDIX "A"

FROM INSIDE AGREEMENT BETWEEN IBEW LOCAL UNION NO. 234 AND MONTEREY BAY CALIFORNIA CHAPTER N.E.C.A., INC.

1.04 There shall be no stoppage of work either by strike or lockout because of any proposed changes in this Agreement or dispute over matters relating to this Agreement. All such matters must be handled as stated herein.

2.05 Management Rights. The Union understands the Employer is responsible to perform the work required by the owner. The Employer shall therefore have no restrictions, except those specifically provided for in this collective bargaining Agreement in planning, directing, and controlling the operation of all his work; in deciding the number and kind of Employees to properly perform the work; in hiring and laying off Employees; in transferring Employees from job to job within the local union's geographical jurisdiction; in determining the need and number as well as the person who will act as foreman; in requiring all Employees to observe the Employer's and/or owner's rules and regulations not inconsistent with this Agreement; in requiring all Employees to observe all safety regulations; and in discharging Employees for proper cause.

3.06 Payday—Termination Slips.

(c) 1. If an Employee provides seventy-two hours prior notice of his intention to quit, the Employee is entitled to his wages at the time of quitting.

2. In the event an Employee quits without prior notification, the Employer shall pay all wage due within seventy-two (72) hours or the next payday whichever occurs first. The check shall be mailed to the address provided by the Employee unless other arrangements are agreed upon with the Employee, however, the intent of this section shall not be abrogated or ignored.